495.

SUPREME COURT OF THE UNITED STATES.

No. 38.

THE UNITED STATES, PLAINTIFF,

vs.

WILLIAM LINN, AND AL.

ON A CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT U. S. FOR ILLINOIS.

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Langtree & O'Sullivan, Print.

"District of Illinois, Circuit Court of the United States of America, *June Term*, *A. D.* 1840.

The United States
vs.
William Linn, & David B. Waterman,
Lemuel Lee and others.

The plaintiffs having filed their declarations, as follows: In the circuit court of the United States of America, for the district of Illinois: Of the June term of said court, in the year of our Lord one thousand eight hundred and thirty-eight.

1st. Count.

State and District of Illinois, *ss.*

The United States of America, plaintiffs in this suit, complain of William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asabel Lee, William L. D. Ewing, Alexander P. Field and Joseph Duncan, defendants in this suit, who have been summoned to answer to the said plaintiffs in a plea of debt, &c.: For that whereas, the said defendants and one John Hall, in his lifetime, now deceased, and whom the said defendants have survived, on the first day of August in the year of our Lord, one thousand eight hundred and thirty six, at the town of Vandalia, in the county of Fayette, in the State and district of Illinois, and within the jurisdiction of this court, by their certain writing obligatory, sealed with their seals, and to the court now here shown, the date whereof is the same day and year aforesaid, by the names, contractions, abreviations and descriptions of "Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asabel Lee, Wm. L. D. Ewing, A. P. Field and Joseph Duncan," acknowledged themselves to be held and firmly bound unto the said plaintiffs, in the full and just sum of one hundred thousand dollars, to be paid to the said plaintiffs, when they, the said defendants should be thereunto afterwards requested; and the said plaintiffs, according to the statute in such case made and provided, say that the said writing obligatory was and is subject to a certain condition thereunder written, whereby after reciting to the effect following, that is to say: That the President of the United States had, pursuant to law, appointed the said William Linn, receiver of public moneys, for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years from the twelfth day of January, one thousand eight hundred and thirty-five, by commission bearing date twelfth February, one thousand eight hundred and thirty-five, it

is provided that if the said William Linn, should faithfully execute and discharge the duties of his office, meaning the office of receiver as aforesaid, then the said obligation was to be void and of none effect, otherwise, it should abide and remain in full force and virtue. Nevertheless, the said plaintiffs, in fact say, that after the making of the said writing obligatory, and after the appointment of the said William Linn, to be receiver of public moneys as aforesaid, to wit: on the twenty-second day of November in the year of our Lord one thousand eight hundred and thirty-seven, at Vandalia aforesaid, he, the said William Linn, did not faithfully execute and discharge the duties of his said office, in this, to wit: That there came into and was then and there in the hands of him the said William Linn, as receiver of public moneys, as aforesaid, while he was receiver as aforesaid, and within four years from the said 12th day of January, in the year last aforesaid, a large sum of money belonging to the said plaintiffs, received by him, the said William Linn, as receiver as aforesaid, and in virtue of his said office, for lands sold by the said plaintiffs, of the public lands, subject to sale at Vandalia aforesaid, to wit: the sum of four millions of dollars, which money it was and is the duty of the said William Linn, as such receiver as aforesaid to pay to and account for, to the said plaintiffs, when requested so to do. Yet the said William Linn did not nor hath he, nor would he pay to or account for, to the said plaintiffs the said last mentioned sum of money belonging to the said plaintiffs as aforesaid, and which came into and was in the hands of him, the said William Linn, as receiver of public moneys as aforesaid, or any part thereof, altho' often requested so to do; but he, the said William Linn hath hitherto wholly refused and still doth refuse to pay to the said plaintiffs the said last mentioned sum of money or any part thereof, to the great damage of the said plaintiffs.

2d. Count.

And also, for that whereas, the said defendants and one John Hall, in his lifetime, now deceased, and whom the said defendants have survived, on the first day of April, in the year first aforesaid, at Vandalia aforesaid, in the State and district aforesaid, and within the jurisdiction of this court, made their certain instrument in writing, bearing date the same day and year first aforesaid, and then and there delivered the said instrument in writing to the said plaintiffs, and therein and thereby reciting that the President of the United States had, pursuant to law, appointed the said William Linn to be receiver of public moneys for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years from the twelfth day of January, in the year of our Lord one thousand eight hundred and thirty-five, by commission bearing date of the twelfth of Feb-

ruary in the year last aforesaid, the said defendants did then and there, in and by said instrument in writing, by the names, contractions, abreviations and descriptions of "Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asabel Lee, Wm. L. D. Ewing, A. P. Field, and Joseph Duncan," acknowledge themselves to be held and firmly bound unto the said plaintiffs in the sum, and promised to pay unto the said plaintiffs the sum of one hundred thousand dollars of money of the United States, to which payment well and truly to be made, they, the said defendants, bound themselves jointly and severally their joint and several heirs, executors and administrators, by the said instrument in writing, which said instrument in writing, was however to be void and of none effect, in case and upon the condition that the said William Linn should faithfully execute and discharge the duties of his office, meaning the said office of receiver of public moneys as aforesaid, otherwise, the said instrument in writing should abide and remain in full force and virtue; and the said plaintiffs in fact say, that after the making and delivery of the said instrument in writing, and after the appointment of him the said William Linn to be receiver of public moneys as aforesaid, he, the said William Linn, did not faithfully execute and discharge, and hath not faithfully executed and discharged the duties of his said office as aforesaid, in this, to wit: That within four years from the said twelfth day of January, and whilst he the said William Linn was receiver of public moneys as aforesaid, there came into and was in the hands of him the said William Linn, as such receiver as aforesaid, a large sum of money belonging to the said plaintiffs, received by him the said William Linn as such receiver, and in virtue of his office of receiver as aforesaid, for lands sold by the said plaintiffs of the public lands subject to sale and sold at Vandalia aforesaid, to wit: the sum of four millions of dollars of money of the United States of America, which money so received by the said William Linn, and in his hands while receiver as aforesaid, it is and was the duty of him the said William Linn, in the faithful execution and discharge of the duties of his said office, to account for and pay to the said plaintiffs, when requested so to do; yet the said William Linn, hath not, nor would he, altho' often requested so to do, to wit: on the second day of April, in the year of our Lord one thousand eight hundred and thirty-eight, at Vandalia aforesaid, account for and pay to the said plaintiffs the said last mentioned sum of money, or any part thereof, but he, the said William Linn, hath hitherto wholly neglected and refused, and still doth neglect and refuse to account for or pay to the said plaintiffs the same, or any part thereof, to the great damage of the said plaintiffs.

3d. Count.

And also for that whereas, the said defendants and one John Hall, in his lifetime, now deceased, and whom the said defendants have survived, on the first day of April in the year first aforesaid, at Vandalia aforesaid, in the State and district aforesaid, and within the jurisdiction aforesaid, made their certain other instrument in writing bearing date the same day and year first aforesaid, their own proper hands being thereunto subscribed, and then and there delivered the same instrument in writing to the said plaintiffs, and thereby by the names, contractions, abreviations and descriptions of "Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asabel Lee, Wm. L. D. Ewing, A. P. Field and Joseph Duncan," reciting in said instrument that the President of the United States had, pursuant to law, appointed the said William Linn to be receiver of public moneys for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years from the twelfth day of January one thousand eight hundred and thirty-five, by commission, bearing date the twelfth day of February, in the year last aforesaid, did acknowledge themselves to be held and firmly bound unto the said plaintiffs, in the full and just sum of one hundred thousand dollars of money of the United States, which said sum of money, they, the said defendants, bound themselves, their joint and several heirs, executors and administrators, jointly and severally, by said instrument in writing, and promised well and truly to pay to the said plaintiffs, if the said William Linn, so appointed receiver as aforesaid, and to act as such receiver, and in such office of receiver as aforesaid, should not faithfully execute and discharge the duties of his said office; and the said plaintiffs in fact say, that after the making and delivering of the said instrument in writing, and after the appointment of the said William Linn, to be receiver of public moneys as aforesaid, he, the said William Linn, did not faithfully execute and discharge the duties of his said office, in this, to wit: That there came into the hands of the said William Linn whilst he was receiver as aforesaid, and within four years from the said twelfth day of January, in the year last aforesaid, a large sum of money belonging to the said plaintiffs, received by him, the said William Linn, in virtue of his office of receiver as aforesaid, for lands sold by the said plaintiffs of the public lands subject to sale, and sold at Vandalia aforesaid, to wit: the sum of four millions of dollars, which money so received by the said William Linn, and in his hands, whilst receiver as aforesaid, it is and was the duty of the said William Linn as such receiver, in the faithful execution and discharge of the duties of his said office, to account for and pay to the said plaintiffs when requested so to do; yet the said William Linn did not, nor hath he, nor would he, altho' often re-

quested so to do, account for and pay to the said plaintiffs the said sum of money last mentioned, or any part thereof; but he, the said William Linn, hath hitherto wholly neglected and refused, and still doth neglect and refuse to account for, or pay to the said plaintiffs, the said sum of money last mentioned, or any part thereof; by means of which said premises, the said plaintiffs have sustained damage to a large amount, to wit: to the amount of ninety thousand dollars, whereby and action hath accrued to demand and have, of and from the said defendants, the said sum of one hundred thousand dollars. Yet the said defendants, altho' often requested so to do, have not as yet paid the said sum of one hundred thousand dollars, or any part thereof, to the said plaintiffs; but to pay to them the same, or any part thereof, they the said defendants, have hitherto wholly refused and still do refuse, to the damage of the said plaintiffs of ninety thousand dollars; and therefore they sue, &c.

D. J. BAKER,
Attorney for said Plaintiffs.

A copy of the writing obligatory, described in the first count, and of the instrument in writing described in the second and third counts of the foregoing declaration, is herewith filed.

D. J. BAKER,
Attorney for Plaintiffs.

And the defendants filed their demurrer to the second and third counts of the declaration, which demurrer is in the words following, to wit:

And the said defendants, by Breese, Logan and Davis, their attorneys, come and defend the wrong and injury, when &c., and say that the second and third counts in said declaration, and the matters and things therein contained, in manner and form as the same are above stated, are not sufficient in law for said plaintiffs to have or maintain their aforesaid action thereof, against them, the said defendants, and that they are not bound by law to answer the same, and this they are ready to verify; wherefore they pray judgment, &c.

To which the plaintiffs rejoined, which rejoinder is as follows, to wit: and the said United States of America, the plaintiffs aforesaid, say that the said second and third counts of the said declaration, and the matters therein contained in manner and form, as the same are above stated in the said second and third counts of the said declaration and set forth, are sufficient in law for them the said plaintiffs, to have and maintain their aforesaid action thereof, against them, the said defendants; and the said plaintiffs are ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said second and third counts of the said

declaration, nor hitherto in any manner denied the same, the said plaintiffs pray judgment, and their said debt in the said second and third counts of the said declaration mentioned to be adjudged to them, &c.

DAVID J. BAKER,
Attorney for said Plaintiffs.

And the cause being argued before the court, the opinions of the judges were opposed, on the points:

1st. Whether the obligation set out in the second and third counts in the declaration, being without seal, is a bond within the act of Congress?

2d. Whether such an instrument is good at common law?

And on application of the plaintiffs, by their counsel, the above points are ordered to be certified agreeably to the act of Congress.

In testimony that the above are true and correct copies of the amended declarations, demurrer, joinder and points of division, as appear on file and of record in my office, in the above entitled cause, I, James F. Owings, clerk of the circuit court of the United States, for the district of Illinois, have hereunto subscribed
[L. S.] my name, and affixed the seal of said court, this thirteenth day of June, in the year of our Lord, one thousand eight hundred and forty, and of our Independence the 64th year.

JAMES F. OWINGS, *Clerk.*